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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H 2008 258

VICKI L. SIMON aka VICKI NUNEZ  
1255 Circle Avenue, Unit A  
Seaside, CA 93955

**A C C U S A T I O N**

Respiratory Care Practitioner License no. 23198

Respondent.

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about September 5, 2003, the Respiratory Care Board issued Respiratory Care Practitioner License Number 23198 to Vicki L. Nunez (Respondent). On August 7, 2008, Respondent submitted notice of a name change to Vicki L. Simon. The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2010, unless renewed.

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1 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2  
2 (commencing with section 4015) of Chapter 9 of this code.

3 "(b) Used any controlled substance as defined in Division 10 (commencing with  
4 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2  
5 (commencing with section 4015) of Chapter 9 of this code."

6 8. Section 3755 of the Code states:

7 "The board may take action against any respiratory care practitioner who is  
8 charged with unprofessional conduct in administering, or attempting to administer, direct  
9 or indirect respiratory care. Unprofessional conduct includes, but is not limited to,  
10 repeated acts of clearly administering directly or indirectly inappropriate or unsafe  
11 respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or  
12 monitoring techniques, and violation of any provision of Section 3750. The board may  
13 determine unprofessional conduct involving any and all aspects of respiratory care  
14 performed by anyone licensed as a respiratory care practitioner."

15 9. California Code of Regulations (CCR), title 16, section 1399.370, states:

16 "For the purposes of denial, suspension, or revocation of a license, a crime or act  
17 shall be considered to be substantially related to the qualifications, functions or duties of  
18 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
19 perform the functions authorized by his or her license or in a manner inconsistent with the  
20 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
21 those involving the following:

22 "(a) Violating or attempting to violate, directly or indirectly, or assisting or  
23 abetting the violation of or conspiring to violate any provision or term of the Act."

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1 COST RECOVERY

2 10. Section 3753.5, subdivision (a) of the Code states:

3 "In any order issued in resolution of a disciplinary proceeding before the board,  
4 the board or the administrative law judge may direct any practitioner or applicant found to have  
5 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
6 investigation and prosecution of the case."

7 11. Section 3753.7 of the Code states:

8 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
9 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
10 administrative, filing, and service fees."

11 12. Section 3753.1 of the Code states:

12 "(a) An administrative disciplinary decision imposing terms of probation may  
13 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
14 associated with monitoring the probation. "

15 FIRST CAUSE FOR DISCIPLINE

16 (Possession and/or Use of Controlled Substance)

17 13. Respondent is subject to disciplinary action under code sections 3750.5(a)  
18 [possession of a controlled substance] and 3750.5(b) [use of a controlled substance], section  
19 3750(g) and CCR 1399.370(a) in that, while employed as a respiratory care practitioner, she  
20 withdrew hydrocodone<sup>1</sup> (Vicodin) for personal use from her employer's medication dispensing  
21 system. The circumstances are as follows:

22 14. On or about April 21, 2008, respondent was working in the intensive care  
23 unit (ICU) as a respiratory care practitioner at Community Hospital of the Monterey Peninsula  
24 (CHOMP) in Monterey, California, and was known as Vicki Nunez. The Charge Nurse L.R.

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25  
26 1. Vicodin is a trade name for a combination of hydrocodone bitartrate and  
27 acetaminophen. Hydrocodone bitartrate is a semisynthetic narcotic analgesic, a dangerous drug  
28 as defined in section 4022, a Schedule III controlled substance and narcotic as defined by  
section 11056, subdivision (e), of the Health and Safety Code.

1 noticed that respondent was standing at a PYXIS machine (which dispenses medications  
2 including controlled substances) for a longer amount of time than seemed necessary to retrieve a  
3 respiratory medication. After respondent left the PYXIS station, L.R. ran a discrepancy report  
4 and found that a ten pill hydrocodone (Vicodin) deficit had been created in the name of M.K., a  
5 registered nurse. L.R. reported this information to her supervisor. M.K. was interviewed about  
6 the missing Vicodin, and she stated that while she was at the PYXIS station, respondent told her  
7 that respondent's password was not working, and respondent asked to retrieve a medication for  
8 respiratory treatment. M.K. did not sign out of PYXIS and allowed respondent to obtain the  
9 respiratory medication via M.K.'s password.

10                   15.     On April 21, 2008, N.S., CHOMP's Assistant Director of Human  
11 Resources interviewed respondent about the medication discrepancy. Respondent admitted that  
12 she had removed ten Vicodin pills from the PYXIS machine that morning, and stated that she had  
13 ingested two tablets orally. She also admitted that on a prior occasion, she had taken two  
14 Vicodin pills for personal use from the PYXIS machine. Respondent was asked to turn in the  
15 missing medication, and at first she denied that she had the pills in her possession. She claimed  
16 that the pills were in her locker. Respondent was escorted to her locker but did not find the pills.  
17 She then checked her pants pocket where she found the ten pills. Respondent was placed on  
18 immediate suspension pending further investigation.

19                   16.     Therefore, respondent's license is subject to discipline in that, while she  
20 was employed as a respiratory care practitioner, she withdrew Vicodin pills from a PYXIS  
21 machine for personal use and ingested two Vicodin pills, in violation of code sections 3750.5(a)  
22 [possession of a controlled substance] and 3750.5(b) [use of a controlled substance], section  
23 3750(g) and CCR 1399.370(a).

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1 SECOND CAUSE FOR DISCIPLINE

2 (Dishonest Act)

3 17. Paragraphs 14 through 15 above are incorporated herein as though fully set  
4 forth.

5 18. On two separate occasions, Respondent withdrew Vicodin pills from a  
6 PYXIS medication dispensing unit for her personal use, which constitutes a dishonest act and is  
7 in violation of code section 3750(j).

8 THIRD CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

10 19. Paragraphs 14 through 15 above are incorporated herein as though fully set  
11 forth.

12 20. On two separate occasions, Respondent withdrew Vicodin pills from a  
13 PYXIS medication dispensing unit for her personal use, which constitutes unprofessional  
14 conduct, and is in violation of code section 3755.

15 MATTER IN AGGRAVATION

16 21. On or about September 29, 2006, Respondent was arrested for violating  
17 Vehicle Code section 23152(a), driving under the influence of Ativan, a Schedule IV controlled  
18 substance as defined by section 11057, subdivision (d) of the Health and Safety Code.

19 22. On or about May 21, 2007, the Board issued Citation and Fine No. C-07-  
20 0270 to respondent, based on her March 28, 2007 conviction upon her plea of no contest to an  
21 amended charge of Vehicle Code section 23103, reckless driving. The conviction was a  
22 violation of Business and Professions code sections 3750(d) and 3752 [conviction of a crime],  
23 and California Code of Regulations 1399.370 (a) and (c) [conviction of a crime involving  
24 reckless driving while under the influence.] Respondent was ordered to pay a fine in the amount  
25 of \$250.00 within three months from the issuance date of the Citation.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

- 1. Revoking or suspending Respiratory Care Practitioner License Number 23198, issued to VICKI L. SIMON aka VICKI L. NUNEZ.
- 2. Ordering VICKI L. SIMON aka VICKI L. NUNEZ to pay to the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
- 3. Taking such other and further action as deemed necessary and proper.

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DATED: September 26, 2008

Original signed by Liane Zimmerman for:  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant

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